

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3235 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL GOKALBHAI KALUBHAI

Versus

BANESANG MERUBHAI GOHEL

AND OTHERS.

Appearance:

MR PV HATHI for Petitioner

SERVED for Respondent No. 1

MR HV CHHATRAPATI for Respondent No. 3

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 17/04/96

ORAL JUDGEMENT

This petition under Art. 227 of the constitution arises out of the proceedings under the Gujarat Rural Debtors' Relief Act, 1972 (for short " the Act").

The land bearing survey no. 718 admeasuring 7 Acres and 18 Gunthas situated in village Bhojpura, was

sold to the petitioner by second respondent Rana Sukubha Rajubha by registered sale deed on March 17, 1974 for Rs.4,500/-. It appears that first respondent who initiated the proceedings being debtor under the Act had sold the said land to second respondent on April 8, 1967. It is the case of the petitioner that he is in actual physical possession of the land in question in view of the aforesaid registered sale deed in his favour.

First respondent initiated the proceedings under the Act for adjustment or settlement of the debt against five persons named in the order of the Debt Settlement Officer, Surendranagar at Annexure A, wherein the name of the petitioner as one of the creditors was not there, nor any debt was sought to be settled with the petitioner herein. Curiously enough, Debt Settlement Officer, Surendranagar, by the impugned order dt. December 18, 1980, ordered to hand over the land in question to the first respondent in settlement of the debt, holding inter alia, that the debt of the debtor, first respondent, was settled under sec.14(2) of the Act. The petitioner alongwith respondent no.2, being aggrieved by the said order, preferred Appeal No. 382 before the District Registrar, Rural Debts, Rajkot on January 7, 1981 under sec. 13 of the Act. The appellate authority, by the impugned order dt. June 7, 1982, dismissed the appeal without considering the issue as to outright sale with respect of the land in question by the second respondent in favour of the petitioner. Hence the present petition.

I have heard Mr. P.V.Hathi, the learned advocate for the petitioner. Nobody has appeared on behalf of the respondents, though served.

Considering the record, it is clear that the Debt Settlement Officer and the appellant authority as well have not considered the important and relevant fact that at the time of debt settlement proceedings, the petitioner was not made a party by the first respondent, nor he was heard at the time of passing the impugned order at Annexure A, though he was a lawful owner and occupier of the land in question. There is nothing to show on record that there existed relationship of debtor and creditor between the petitioner and first respondent. The sale transaction being outright sale in respect of the land in question was final and conclusive way back in 1967 between the first respondent, the debtor and the second respondent and at that time, the said Act had not come into force. Therefore, by no stretch of reasoning, it can be said that the land in question was subsisting of the debt on the appointed day. Both the authorities

below have not considered this aspect of the fact and law in including land in question as part of the debt and quashed the sale transaction in respect thereof. The authorities below have not considered and appreciated the relevant provisions of the Act. The debt as defined in clause (c) of sec.2 of the Gujarat Rural Debtors' Relief Act means any liability (inclusive of interest) which is due from a debtor, in cash or kind, whether secured or unsecured, or whether payable under a decree or order of any Civil Court or otherwise, and subsisting on and legally recoverable on or after the appointed day. What is, therefore, necessary is the existence of the debt between the parties and the subsisting debt must be legally recoverable on or after the appointed day. Appointed day is the date on which the Act came into force i.e. August 15, 1976. On August 15, 1976, therefore, debt should subsist between the parties and from the findings of the Debt Settlement Officer or the Appellate Authority, it does not transpire that the debt was subsisting on that particular day. The object of the Act is to provide for relief from indebtedness to certain classes of farmers, rural artisans and rural labourers in the State of Gujarat.

In the instant case, it is an admitted position that the debtor, first respondent had sold the land in question on 8th April, 1967 to second respondent who in his turn, sold to the petitioner on 17th March, 1974. Thus both the said transactions were prior to 15th August, 1976 i.e. before the appointed day. Therefore, there cannot be any dues as defined in clause (c) of sec.2 of the Act between respondents nos. 1 and 2. In any view of the matter, there was no transaction whatsoever between the petitioner and the first respondent. The Debt Settlement Officer and the appellate authority as well have failed to appreciate that the sale transaction between first respondent and second respondent and further the sale transaction in question in favour of the petitioner were outright sale transaction. In these facts and circumstances of the case, the order discharging debt completely and further ordering delivery of the possession of the land in question to first respondent is illegal and contrary to the facts on record.

The appellate authority also failed to appreciate that the Debt Settlement Officer has passed the impugned order without giving any notice and/or opportunity to the petitioner and as such, the order was liable to be quashed. There is, therefore, non-application of mind on the part of the appellate authority. Impugned order, so

far as it relates to the land bearing Survey No. 718 is liable to be quashed.

In the result, the petition succeeds. The impugned order, so far as it relates to land bearing Survey No. 718 admeasuring 7 Acres and 18 Gunthas situated at village Bhojpura is quashed and set aside. Rule is accordingly made absolute with no order as to costs.
